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NOTES OF THE WEEK

Justice Seen to be Done

One of the first things a justice has to realize is that he must not only refrain from acting in a case in which he has a personal or financial interest, but also refrain when there might be any ground for the impression that he might be biased. In case of doubt he can consult with the chairman and the clerk, but the safe rule is that when in doubt it is best not to act.

In the High Court on March 13, Byrne, J., discontinued the hearing of an action and said it would be better for another Judge to hear it, because he had realized that a principal witness was known to him. Magistrates will take note that this was not an instance of the Judge knowing one of the parties, but only a witness, yet the learned Judge felt it incumbent on him to decline to hear the case further. The scrupulous avoidance of any appearance of bias, let alone actual interest, is one of the grounds for the complete trust of the public in the judiciary.

Conviction as Evidence of Cruelty

A judgment in a civil action is in general no evidence of the truth of the matter decided against the same person in a criminal trial, nor *vice versa* the parties being different, *Castrique* v. *Imrie* (1869) 39 L.J.C.P. 350. This principle has to be applied in matrimonial proceedings where the ground of the petition is that the respondent has been guilty of a crime, *e.g.*, rape.

Sachs, J., considered the effect of the conviction, without further proof of the offence, when delivering judgment in *Ingram* v. *Ingram* (*The Times*, March 10). The husband was granted a divorce on the grounds of cruelty and desertion by the wife who was German born. The wife had been convicted in July, 1940, on charges of conspiring to aid the enemy, and of doing certain acts to assist the enemy. The shock of the conviction affected the husband's health seriously. He visited her three times in prison. On the first occasion she remarked how ill he looked, and she said she did not want anything more to do with him. After her release in 1947 she never visited her husband.

The learned Judge found both cruelty and desertion proved. In the course of his judgment he observed that the conviction of one spouse might have a most profound effect upon the other and it would be wholly unrealistic to exclude that evidence. When a marriage broke down upon a conviction, it was open to the court to draw the inference of guilt, although it need not necessarily be drawn. It would be otherwise in the case of a petition based on rape or sodomy, for example. The inference in the present case was that the wife had been guilty of active and overt conduct of a treasonable type which had led to convictions for espionage. The test in each case must be this: Did the conviction, viewed against the background of the marriage, tend to strike at the roots of the matrimonial relationship and cause injury to health ? The wife having in her own mind to choose between Hitler and her husband had rejected her husband regardless of the potential consequences to him.

Admission of a Co-defendant

If two persons are charged jointly with an offence and one pleads guilty, that is not evidence against his co-defendant. This rests on a sound general principle, but in a case at quarter sessions the plea of one prisoner was treated as evidence against the other, and the Court of Criminal Appeal quashed the conviction (*R.* v. *Moore*, *The Times*, March 13).

The Lord Chief Justice said that one of the two prisoners pleaded guilty before the trial. There was evidence that the two men had been seen together in a public house and that the appellant had told a lie about this, but a man could not be convicted of housebreaking because he had told a lie. There was a great deal of suspicion but that was not enough.

It had been suggested that as the appellant was in the company of the man who had pleaded guilty, that was evidence upon which the appellant might be found guilty, in view of the other evidence.

It is difficult for a jury, and perhaps for new magistrates, to realize that they

must disregard a plea or a confession made by one defendant when considering the evidence against a co-defendant. As Lord Goddard said in the course of delivering judgment, when two men were indicted together and one had pleaded guilty it was very difficult to avoid telling the jury, and it was the commonest thing for them to be told not to pay any attention to it. Justices, in combining the functions of Judge and jury, have to apply the principle.

Corroboration

In cases where corroboration of a witness's evidence is required, either by statute or by the practice of the courts, it is sometimes difficult to determine whether, as a matter of law, evidence adduced amounts to corroboration. On this point, a jury receives guidance from the presiding Judge. The weight of the evidence is another matter.

In *R.* v. *Tragen* (*The Times*, March 13) a conviction for indecent assault was quashed on account of misdirection by the deputy chairman of quarter sessions, who had told the jury: "I direct you as a matter of law that . . . there is corroboration."

Byrne, J., delivering the judgment of the Court of Criminal Appeal, said that the function of the Judge was to point out the evidence capable in law of being regarded as corroboration. It was then for the jury to decide whether or not this evidence amounted to corroboration.

Delayed Prosecution

For offences of tax evasion to the amount of £80,000 a fine of £10,000 was imposed at Bristol Assizes in the case of *R.* v. *Reynolds*. Diplock, J., observed that he imposed a fine instead of a sentence of imprisonment because the defendant had suffered in health through the anxiety and suspense he had gone through for some five years before the prosecution was begun, and because the delay had also resulted in financial loss to him in his business transactions. In addition, the fact that he, a man of good repute, must give up his connexion with public and charitable organizations was taken into consideration.

The delay on the part of the Inland Revenue authorities in commencing proceedings was described by the learned Judge as, in his opinion, unnecessary. The defendant was said to have made full disclosure five years before the prosecution was begun. The newspaper report does not include any reference to any explanation of the delay.

Quite apart from the anxiety and suspense inflicted upon an accused person, there are other objections to any avoidable delay in commencing proceedings. Witnesses may become no longer available, or their recollection of incidents may fade. There is also a tendency to regard a stale offence, which could have been prosecuted earlier, as no longer suitable to be punished with severity, particularly having regard to what the defendant may have suffered mentally. Justice done quickly is much more likely to be satisfactory all round.

Naturally, if long delay is due to the defendant himself, either because he has absconded from justice or because he has asked for postponements, the position is wholly different. The point is that the prosecution should proceed with as little delay as is reasonably possible, even though there is no general time limit in respect of indictable offences.

Prosecutor as Defendant

The chief constable of Buckinghamshire has been given considerable publicity in the press as having taken a course that is, so far as we can recollect, without precedent. In his official capacity he obtained a summons against himself in his private capacity, pleaded guilty and was fined.

The proceedings arose out of a road accident in which the chief constable and a motor cyclist were involved. The chief constable, as the driver of the car, evidently came to the conclusion that he was in some measure to blame, and so he caused himself to be summoned for driving without reasonable consideration for other users of the road. Both parties were legally represented.

It says much for a man's sense of duty and impartiality that he should take action against himself. This was not a case of a public or local authority taking proceedings against itself, in which case any fine and costs would be met out of the authority's funds. Brigadier Cheney has no doubt paid the sums imposed, out of his own pocket, and they will be duly paid over to the appropriate public funds.

Having decided to prosecute himself, the chief constable pleaded guilty. An intriguing situation might have arisen if, on second thoughts and on taking legal advice, he had altered his opinion of his driving and decided to contest the case. If he had convinced himself and the magistrates that he was not guilty and the summons had been dismissed, the defendant in his personal capacity might even have been making application for costs against himself in his capacity of police officer. However, that situation was not likely to arise, and in fact did not arise.

Parental Responsibility

A provincial newspaper reports a case in which the attitude of the parents towards their daughter must have caused some difficulty for the court. A 16 year old girl charged with being drunk and with being in possession of an offensive weapon, was said to have been released from a mental hospital only 48 hours before her arrest, and to have been handed over to the guardianship of her parents. It was considered necessary to remand her to prison because of her behaviour in custody at the police station. A police officer told the juvenile court that the parents had been advised and had been offered police transport, but a message had been received that they would not come and wanted to have nothing to do with the case. If the court considers their presence necessary, it can take steps under s. 34 of the Children and Young Persons Act, 1933, and the rules, to compel their attendance. Parents unfortunately have to admit sometimes that they can do no more for a child, who has proved too wayward and disobedient for them to be able to exercise proper control and influence, but they usually come to court to say so and to show interest in what becomes of their child. The court generally wishes to hear from the parents, or at least from one of them, just what has happened, and how the present state of affairs has developed. On its part, the court can best help the child and the parents when it has seen and talked with all of them and has not had to rely on written documents or second-hand statements. The parents are not always to blame, and they may be in despair, but it is wise for them to attend the court even if they feel they are powerless to do anything more for their child.

The End and the Means

To earn much-needed dollars by exporting goods to the United States is a worthy object and one to be encouraged, but to achieve it by breaking the law is not to be justified on that account. That is why a reputable company got into trouble, with the result that prosecution and conviction ensued.

The company was prosecuted at East Ham magistrates court by the Board of Trade for the offence of unlawfully applying a false trade description, namely "U.K. origin," to certain goods, contrary to s. 2 of the Merchandise Marks

Act, 1887. The goods were B1 vitamins, and were to be sent to the United States in fulfilment of an order. The company, being unable to supply them from production, imported some from France, and then, it was stated, substituted new labels so as to indicate U.K. origin.

For the prosecution, it was said that if the vitamins had turned out to be of an inferior quality, damage might have been done to British export trade. Counsel for the defence, pleading guilty to what he described as the merest technical offence, and asking that it should be dealt with by absolute discharge, stated that the company had been told to go all out for dollar-earning trade, and that this transaction would have earned 31,500 dollars. The vitamins were of the same standard quality as those of English manufacture, and the company was only seeking to fulfil an order, making nothing out of the altered description.

The magistrates imposed a fine of £20, with £5 5*s*. costs evidently not regarding this as an instance of the end justifying the means.

Local Land Charges

At 116 J.P.N. 673, we expressed the opinion, in answering P.P. 5, that it would be premature to remove from the register of local land charges those entries in part III (*a*) which had to do with contraventions of previous planning control. A similar question has been put to us this year about the entries in part III (*b*), which is concerned with planning schemes under the Town and Country Planning Acts earlier than the Act of 1947. As regards schemes, it seems clear that the entries must be retained in the register so long as a scheme still has force; so long, that is to say, as its effect has not been ended under sch. 10 to the Act of 1947. It is more a matter of opinion how far what we said in 1952 about entries in part III (*a*) still holds good. One registrar of local land charges has suggested to us that the number of cases which can now arise under s. 12 (5) of the Act of 1947 must be small, and the number under s. 18 (5) smaller still. He concedes, however, that a registrar (who may or may not be an officer of the planning authority) should keep these entries in his register if asked to do so by the planning authority. For our part we are inclined to think it wiser to retain these entries for the present. The register should no doubt be weeded from time to time, so as to keep it of manageable size, but the consequences to the planning authority may be serious if an entry is removed prematurely, and there may also be difficulties for the inadvertent purchaser of property. We therefore still advise great caution in deleting entries which relate to previous planning controls.

Time for Acquiring Short Tenancies

There seems to be no judicial authority on the question whether the time limit in s. 123 of the Lands Clauses Consolidation Act, 1845, applies to s. 121 of the same Act. The reason may be that the person in possession of lands to whom s. 121 applies is not entitled to any compensation if he is required to give up possession in accordance with the terms of his tenancy. It follows that, if the acquiring authority require him to give up possession in accordance with s. 121, it will not usually be to his interest to complain of their not having done so within three years, because they would only have to abandon action under s. 121, and then proceed by an ordinary notice to quit or by refusing renewal of the tenancy when it expired. One cause of difficulty, in relating s. 121 to other sections of the Act, is that s. 121 does not in so many words authorize the acquiring authority to require that possession shall be given up. The decision of Jessel, M.R., in *Syers* v. *Metropolitan Board of Works* (1877) 36 L.T. 277 shows that this power is implied, and the next question is whether the action thus impliedly authorized falls within the phase " taking of lands " in s. 123. We cannot think that Parliament intended the person in possession on a short tenancy to be exposed to action under s. 121 for an indefinite period; in this respect action under that section is on the same footing as action under s. 18 of the Act. A notice requiring possession under s. 121 is the compulsory procedure for short tenancies, corresponding to the notice to treat under s. 18 for other interests. Some interests are taken by virtue of s. 18, and others by virtue of s. 121, or by simple notice to quit or by refusing to renew a tenancy.

Section 121 contains as many of the elements of compulsory taking as s. 18 and the following sections. This conclusion does not involve any hardship for the acquiring authority. If they have failed to make use of s. 121 within three years, it cannot much matter that they have to wait a little longer for a tenancy to expire or for a notice to quit to take effect. In an exceptional case, where it is important for them to go upon the tenant's land before his tenancy expires but after the three years named in s. 123, they will usually be able to get what they want by offering compensation, in the same way as if s. 121 was still available, because this will be better business than obduracy, from the tenant's own point of view.

Travelling claims

At 119 J.P.N. 855, we answered a question about the use by a member of a local authority of a vehicle owned by some member of his family, or by a limited company of which he may be the principal shareholder, or belonging to a firm by which he is employed, it being agreed between him and the firm that he may use the car for private purposes. We expressed the opinion that the vehicle in any of these cases was not his own, and therefore that he could not claim an allowance from the local authority when he travelled in it on their business. This may seem an artificial view where the vehicle belongs to a company, and the company virtually belongs to the councillor who uses the vehicle. Nevertheless, we remain of the opinion that our view of the governing enactment was correct. The reader who sent the query to us incidentally mentioned legal proceedings, which had been taken for claiming travelling allowances when the claiming councillor was not entitled to them. We have heard of a case in which different sections of the staff in the same audit district found discrepancies in the accounts for a river board and one of its constituent authorities, which led to a charge of making false declarations under the travelling allowance regulations, and also to a charge of obtaining money by false pretences. There have also to our knowledge been cases where a councillor was entitled to first class fare, and claimed it although he travelled third class, and there have been cases where a councillor claimed the fare for a journey taken by train, or some other type of transport which had to be paid for, when in fact he had been able to make the journey without payment. These cases do not often come before the courts, since it is only when there is pretty clearly a fraudulent intent that proceedings are likely to be taken. In other cases, if a member pleads innocence and refunds what he has overcharged, the matter will not receive publicity. We think there is no doubt that the financial officers of local authorities, who receive these claims, are under a duty to satisfy themselves that the councillor has actually incurred the expense, and that it falls within the regulations.

Joint Action

A precedent which may be useful, where landowners are willing to hand some large property over for public use, has been created by agreement between the county council of Shropshire and the urban district council of Ellesmere. It has become fairly common for landowners to offer property to the National Trust. Often such property has already been open for public recreation by the goodwill of its owner; sometimes in the nineteenth century and the early part of the present century an owner has incurred substantial expense in keeping up such property. There are now few landowners who can do this, while the National Trust has small means of paying for the upkeep of properties transferred to it, except from whatever local charges can be made. The obvious solution where a small piece of land is in question is to let the appropriate local authority have it under s. 164 of the Public Health Act, 1875, or other appropriate powers. This solution is however beyond the financial capacity of some local authorities, where a very large area is offered to the public. Sometimes a joint committee of two or three neighbouring district councils has been formed. In the case now brought to our notice the county council has become partner in a joint committee with the urban district council, to take over the Mere from which the district takes its name. The area of water is about 114 acres, and it is surrounded by pleasure grounds provided with a restaurant. It seems that money was raised locally to restore the gardens which had suffered during the war, and that much work was done by voluntary labour—another excellent precedent. There is a bird sanctuary which brings visitors all the year round, and in the summer the Mere is available for boating. The agreement between the two local authorities provides for equal sharing of expenditure, but the revenue from boating, fishing, and the restaurant, which is let to a contractor, goes a long way towards the upkeep. On the managing committee the district council is more strongly represented than the county council, and this is as it should be, since the day to day use of the property will be by local people, but the county council's approval is required for capital expenditure, or for any development which would change the natural appearance of the property.

We imagine that the county council agreed to come into this project, partly because of the size of the property and partly because of a new conception of the usefulness of such properties, which has come with modern transport. There is a possible comparison with the policy now followed by the Minister of Agriculture, Fisheries, and Food, in dealing with inclosures. The Commons Acts require that inclosure shall be for the benefit of the neighbourhood. A witness from the Ministry before the Royal Commission on Commons stated that this phrase had come to be understood in terms of time rather than of space. Persons who can, by using public service vehicles, take advantage of a common for recreation are nowadays regarded as among its neighbours.

THE STRANGE LAWS OF PURITAN DAYS

By FRANK A. KING

Persons who object to modern legislation for the regulation of conduct may, after all, consider themselves fortunate. Sometimes drinking or other restrictions are resented as infringements on personal liberty, but what would we say of a law under which, in a certain territory, the mere possession of dice or playing-cards was punishable by a fine ?

The Puritans who settled in America in the seventeenth century hoped to find a place where they could practise their religion without interference, and devised laws which reveal their own intolerance of the religious beliefs of other sects. Their regulations included the following enactments:

If any man, after due conviction, shall have or worship any other god but the Lord God, he shall be put to death (Leviticus, xxiv, 15–16).

No food or lodging shall be afforded to a Quaker, Adamite or other heretic.

How strictly the conduct of the individual was made to conform with religious rules may be gathered from the following laws as to Sunday observance, the names of authorities being given in parentheses in some instances:

Every person in this jurisdiction, according to the mind of God, shall duly resort and attend worship upon the Lord's Days at least, and upon public fasting or thanksgiving days, and if any person, without just cause, absent or withdraw from the same, he shall for every such sinful miscarriage forfeit 5*s*. (1656).

No one shall run on the Sabbath Day, or walk in his garden, or elsewhere, except reverently to and from meeting.

No one shall travel, cook victuals, make beds, sweep house, cut hair or shave, on the Sabbath or fasting-day.

No woman shall kiss her child on the Sabbath or fasting-day.

If any man shall kiss his wife or wife kiss her husband on the Lord's Day, the party in fault shall be punished at the discretion of the magistrates.

Tradition says that a man of Newhaven reached home on Sunday, after an absence of several months, and, meeting his wife at the door, as might be expected, kissed her. For thus violating the law he was arraigned before the court and fined.

Children were given excellent reason to obey their parents, as shown by the following regulations:

If any child above 16 years old shall curse, or smite his, her or their parents, such child or children shall be put to death (Exodus xxi, 17; Leviticus, xx, 9; Exodus xxi, 15), unless it be proved that the parents have been very unchristianly negligent in the education of such child, etc.

If any man have a stubborn, rebellious son of 16 years old, who will not obey the voice of his father or mother, and being chastened will not hearken unto them, then shall his father and mother lay hold on him and bring him to the magistrates assembled in court, and testify unto them that their son is stubborn and rebellious, and will not obey their voice, but lives in sundry crimes; such a son shall be put to death. (Enacted in 1656.)

Puritan notions of propriety, as enforced by the laws, seem strange to modern minds. Thus we learn, on the authority of Barber, as well as from Peters, that " every male shall have his hair cut round according to a cap." Sometimes, half a pumpkin was used instead of a cap, to guide the hair-cutting of these " Roundheads."

Other unique laws included:

No one shall read Common Prayer, keep Christmas or Saints' days, make minced pies, dance, play cards, or play on any instrument of music except the drum, trumpet or jew's-harp.

No man shall court a maid in person or by letter without first obtaining the consent of her parents; £5 penalty for the first offence; £10 for the second; and for the third, imprisonment during the pleasure of the court.

A man that strikes his wife shall be fined £10. A woman that strikes her husband shall be punished at the court's discretion.

And this last regulation shows that, even three centuries ago, there was one law for the male and a less drastic punishment for the woman !

DIVERSION AND INQUIRY

We suppose more and more use is likely to be made of s. 49 of the Town and Country Planning Act, 1947, for stopping up or altering the course of footpaths. We gather that the Commons, Open Spaces, and Footpaths Preservation Society regard it as less open to objection than some forms of ministerial jurisdiction in the same matter (*see* their journal, October, 1948; July, 1951) though they would have preferred a simplified form of procedure before justices. Section 49 cannot be set in motion unless planning permission has been given, to develop land across which the footpath runs. Since it is the Minister of Transport and Civil Aviation who exercises powers of the section, and not the Minister of Housing and Local Government to whom an appeal lies against refusal of planning permission, one can imagine a possibility of conflict. Suppose the Minister of Housing and Local Government to have allowed an appeal against refusal of planning permission, in a case where the planning authority were mainly influenced in refusing by their fear that development might lead to interference with a public footpath. The planning authority would, in effect, then be able to appeal to one Minister against another by objecting to any proposal made by the developing owner to stop up or divert the footpath.

This, however, as we understand, is not the ordinary case. Proposals under s. 49 are usually made to the Minister of Transport and Civil Aviation by a developing owner who is carrying out operations for which planning permission has been given by the planning authority, not by the Minister of Housing and Local Government. The planning authority will, normally, have no objection to the stopping up or diversion, where this is necessary to enable the development to be carried out. (Although this is not invariably true: witness a recent case we shall mention presently.) This being so, the question has been raised with us by a correspondent, whether it is necessary (upon such facts) to bring in a Minister at all. Why, it is asked, especially where a footpath is in a rural district, so that the planning authority and the highway authority are the same, should not a locally elected body, with all its responsibilities, be empowered to complete the business ? We think there are two answers. First, the stopping up or diversion of highways, including footpaths, has long been regarded by English law with special caution. Even now the standard procedure is that laid down by the Highway Act, 1835, which involves an order of the court. Secondly, the stopping up or even diversion of a footpath may look a trivial matter to an elected body, but be the cause of passionate opposition in a village. The Commons, Open Spaces, and Footpaths (Preservation) Society came into existence in the 19th century because of the impression that landowners were finding it too easy to deprive the public at large of commons and footpaths. The suspicion of landowners in this context is far from dead, and any local authority which had power to allow a developing owner to do away with a footpath, wholly or in part, would be open to constant suspicion. And indeed *quis custodiet* may sound more convincing than ever after the case of The Little Common in *The Times*, February 24, 1956, when the two local authorities most concerned with preserving public rights had taken the initiative in steps to override those rights. On more grounds than one, therefore, we think it wiser to require the consent of some person or body wholly removed from even the suspicion of local influence. Because of that suspicion which, however unjustly, may attach in some places even to magistrates in quarter sessions, we are not disposed to doubt the wisdom of Parliament, in having allowed by s. 49 of the Act of 1947 the alternative of recourse to a Minister.

The foregoing reflections have been in part suggested to us by an account we have received of a case in Derbyshire. Upon application made to the Minister of Transport and Civil Aviation, there was strong opposition to the diversion of a length of footpath crossing land which had been developed last year, by the building of a bungalow in pursuance of planning permission granted by a rural district council, in the exercise of powers delegated to them by the county council. The Minister directed a public inquiry to be held in the village by a member of the bar specially appointed for the purpose. This is a procedure we have commended in other contexts, as tending to preserve public confidence, and we gather (*Journal*, July, 1951) that the Commons, Open Spaces, and Footpaths Preservation Society agree with us on this. (The inquiry, by the way, was held in the village school at night, so that all the village could attend—and we are told they did so, in spite of snow and storm.) The curious position arose at this inquiry that the rural district council objected to any alteration of the line of footpath, it being stated on their behalf that they had no objection to building of the house, and laying out of the garden and a carriage drive for which they had given planning permission, but thought the footpath should continue to run (as it always had) across the land which is now the front garden of the house, crossing the carriage drive at right angles.

This was in law and logic a perfectly tenable position for the rural district council, and might be said to be supported by s. 26 of the Local Government Act, 1894. The county council, on the other hand, appeared at the inquiry by a solicitor, who stated that they were content to see the footpath diverted, both as planning authority and as highway authority. (It seems certain that if the county council, in this dual capacity, had had power to allow the proposed diversion, as we have mentioned above had been suggested to us, there would have been grave dissatisfaction on the part of the rural district council and the parish council—who also appeared at the inquiry in opposition.) The lining up of the forces of local government on opposite sides in such a case might, we think, be not unusual, and it strengthens our feeling that the ultimate decision ought to be made elsewhere.

We are told that an incidental point of law was raised which has general importance. The secretary of the Derbyshire Footpaths Preservation Society called attention to s. 13 (1) of the Local Government Act, 1894, and remarked that that section had never been repealed. He suggested that it applied

to the stopping up or diversion of a highway, under s. 49 of the Town and Country Planning Act, 1947, not less than under the statutes which provided for stopping up or diversion when it was enacted 62 years ago. Counsel for the developing owner admitted that s. 13 (1) was still in force, but argued that s. 49 of the new Act had substituted a wholly new procedure and that the right of veto given by the old section to parish councils and rural district councils was not applicable. We imagine that the legal advisers of the Minister must already have considered this point. It is presumably open to argument on an application for prohibition against the Minister, if in any case opponents of an order feel strongly enough to find the money for recourse to the Divisional Court, but we think counsel's argument must be sound. The Act of 1947 provides elaborately for notice to the district council and parish council, and for local inquiry if they object. This would be otiose if they had the right of veto. It is perhaps unfortunate that, in enacting the new procedure, Parliament did not say expressly that the privileged position of the parish council and the district council under s. 13 was to be ousted, if this was intended—as we think it must have been.

There is another point of law which may need to be watched in cases under s. 49 of the Act of 1947, especially where it happens that the planning authority and the rural district council and parish council (in a rural district) are all willing to see a path stopped up or diverted. A public local inquiry is not then compulsory, and there may be a danger of the Minister's overlooking or under-rating the primary requirement in s. 49, which is that the stopping up or diversion shall be "necessary" to enable the permitted development to be carried out. Given development which the appropriate local authorities all regard as desirable in other ways, perhaps as increasing the rateable value of the district or as generally improving local amenities, there may be a temptation to acquiesce in the stopping up or diversion of a footpath because the developing owner will find this desirable or convenient, without his being put to strict proof that it is necessary. Ordinarily, no person wants a public footpath running through his garden or other private grounds, and no commercial firm wants a path carried through its factory. Nevertheless there are hundreds of long established footpaths which do run through private land, both industrial establishments and the grounds appurtenant to residential property. It may be a question, therefore, whether it can often be strictly necessary to divert a path, in order to enable land to be developed: for a decision in a different context upon subjective or objective necessity, *see Durbridge* v. *Sanderson* [1955] 3 All E.R. 154. What s. 49 says, however, is that the Minister can make an order if he is satisfied that it is necessary. In a recent book* on planning law and allied topics by Mr. M. R. R. Davies, the learned author criticizes this subjective form of legislation. If, in the context of this article, Parliament had said that the Minister might make an order when this was necessary for the purposes of the development approved by the planning authority, it would have been open to the courts to reverse his finding of necessity, but, under an enactment which empowers him to move when he is satisfied, the most the courts can do is to make sure that he has properly addressed his mind to the relevant questions. If so, his satisfaction is conclusive. It may however be urged in favour of the language of the section that if a dissatisfied parish council (for example) was at liberty to have the merits re-opened in the High Court the advantage of s. 49, as compared with the Highways Act, 1835, would have been lost.

On the whole, and in the light of such experience as there has been since the Act of 1947 came into operation, we are not inclined to lament its having been made possible to proceed under that section instead of under the Act of 1835. But we do think it is important to keep in mind what the section really says. It is not merely a provision for enabling development owners to stop up or divert footpaths for their own convenience.

* *Principles and Practice of Planning, Compulsory Purchase, and Rating Law*; M. R. R. Davies. Butterworth & Co. (Publishers) Ltd., 1956.

LIABILITY FOR DAMAGE TO UNDERGROUND ELECTRIC CABLES

[CONTRIBUTED]

An underground electric cable is a piece of delicate apparatus which is far more vulnerable to serious damage, albeit slow in manifestation in certain cases, than some excavators of the subsoil may realize. True, it is protected, as in appropriate cases it is required to be, but such protection is not always adequate against damage, particularly where modern mechanical excavating machinery is being used, nor indeed against the workman's pickaxe. Underground cables may be encountered beneath land forming part of a street and also, but rather less frequently, under land in private ownership. In the former case, any consideration of the question of liability for damage must have regard to the statutes relating to the placing of electric cables in streets, and, in the latter case, to the provisions of the common law relating to actions for trespass and negligence.

It will therefore be convenient first to consider the position where an electric cable is laid under land in private ownership or occupation which does not form part of any road or highway (using those terms in their widest meaning) and, second, where such a cable is laid in a street, using that expression in its widest sense, such as the definition of "street" contained in s. 1 (3) of the Public Utilities Street Works Act, 1950.

In the case of *National Coal Board* v. *J. E. Evans & Co (Cardiff) Ltd. and Another* [1951] 2 All E.R. 310, the Court of Appeal considered the earlier authorities regarding liability for trespass and negligence, in relation to damage caused during excavation work to an underground electric cable which had been laid in private land. In August, 1948, the first defendants secured from Glamorganshire county council a contract to erect new workshops at the School of Mines, Treforest, Pontypridd. The work to be done included the cutting of a trench about 150 to 200 *yds.* long from the new workshops across land occupied by the School of Mines and owned by the county council to a manhole just outside that land. The first defendants sub-contracted with the second defendants for the excavation of this trench. The first defendants were supplied with a plan by the county council for the purpose of their work. This plan showed the line of the required trench, but did not show that an underground cable, the property of the plaintiffs, carrying electricity at a pressure of 33,000 volts, ran under the land, athwart the line of the proposed trench at a depth of 3 *ft.*, the same as the trench would have, where it met the cable. In September, 1948, the first defendants marked out for the second

defendants the line of the required trench, and the second defendants began to make the excavation with a mechanical excavator. The excavator hit and broke the concrete cover of the cable and hit the cable itself, thus causing damage which eventually broke the circuit. Donovan, J., found as a fact that the driver of the excavator knew at the time what he had done, and that the clerk of the works of the county council, who was in charge of the works on the site, and the manager of the second defendants, knew on the same day or very soon afterwards what had happened. Neither of the officials nor the driver reported the matter, with a view to the facts being brought to the notice of the owners of the cable, since they considered that no real harm had been done to the cable.

The cutting of the trench was finished, an earthenware pipe was laid in it, and the trench was filled in. In May, 1949, the supply of electricity carried by the cable failed. The fault was located at the site where the cable crossed the trench, and it was found that the cable had been damaged by the excavator in such a way that during the ensuing months water had seeped slowly through the insulating cover and had eventually made contact with the live core of the cable, causing an explosion which blew a hole in the cable and cut off the current. Donovan, J., found that this was the result of the damage done to the cable by the excavator in the previous autumn.

There was an electric pylon on the same land as that in which the trench had to be cut, about 50 *yds.* from where the cable was struck. There was a second pylon about 400 *yds.* distant from the first. The electric cable come overhead from Cwm Colliery, went down the first-mentioned pylon into the earth, emerged at the second pylon and continued overhead to the Albion Colliery, the destination of the electric current. Had the cable run underground in a straight line between the two pylons it would have been nowhere near the line of the required trench.

The National Coal Board who owned the damaged cable claimed damages against both defendants, alleging trespass and negligence.

Donovan, J., found no negligence as pleaded on the part of the defendants. He said that the suggestion that, owing to the presence of the pylons, the defendants should have dug trial holes by hand along the line of the proposed trench put far too big a burden on the first defendants, who had received a plan from their principals, the county council, the owners of the land, showing no electric cable on the line of the intended trench. The first defendants assumed that the plan was correct, that being the normal practice among contractors.

But on the issue of trespass his lordship found for the plaintiffs, awarding them £500 damages. As to the point taken that the injury was involuntary and accidental, he said that he thought that merely another way of pleading inevitable accident; but, on the facts of the case, there was no inevitable accident. The absence of information as to the existence of the cable and where it was sited, in his opinion, afforded no defence against the allegation of trespass.

Both defendant companies appealed. The Court of Appeal held that there was no liability in trespass, since the act was involuntary and accidental. The act of the second defendants' driver was neither negligent (so found by the trial judge) nor wilful, and was " utterly without his fault." The injury was in the main attributable to the plaintiffs or their predecessors, who had committed trespass by placing their cable under the land of the county council without their knowledge or consent.

The judgments delivered by the members of the Court of Appeal in this case provide a clearer exposition of the law regarding this type of case than had previously existed. It was submitted by counsel for the defendants that the question to be decided was whether, where a man is carrying out legitimate operations on land for, and with the authority of, the owner of the land, he does so at his peril, with the result that he will be liable in trespass if he injures something belonging to a third party buried under the surface of the land, the presence of which neither he nor the owner of the land had any reason to suspect, and of which both were quite unaware. It was submitted that the hitting of the cable by the excavator was not the result of negligence, nor was it " wilful," a word which must imply some degree of intention. It was, however, the direct result, though the unintentional result, of a voluntary act.

It was therefore for the Court of Appeal to decide the question whether a man is responsible for damage directly caused to the property of another by any voluntary act of his or whether the dictum in *Weaver* v. *Ward* (1616) Hob. 134, that " no man shall be excused of a trespass . . . except it may be judged utterly without his fault," and the decisions in *Holmes* v. *Mather* (1875) 39 J.P. 567, and *Stanley* v. *Powell* (1891) 55 J.P. 527, were correct. In *Holmes* v. *Mather* the principle of law applicable in this case was clearly stated, *viz.*, " If the act that does the injury is an act of direct force, trespass is the proper remedy where the act is wrongful either as being wilful or as being the result of negligence."

The Court of Appeal were unanimous in their decision to apply the above dictum in *Weaver* v. *Ward*, Cohen, L.J., delivering judgment on the matter in the following terms: " The accident in the present case was attributable mainly to the conduct of the plaintiffs in placing their cable on the land of the county council without the latter's knowledge and without any notification to them; and in these circumstances it would, I think, be not merely inequitable, but contrary to common law principles as laid down in *Weaver* v. *Ward*, that the plaintiffs should be allowed to succeed. Clearly, I should have thought, they could not have succeeded in an action against the county council, since they were trespassers in placing their cable upon the land; and I cannot see any reason why the defendants should be in a worse position than the county council. The only other case to which I need refer is *Stanley* v. *Powell*, which was tried before Denman, J. He cited with approval the observations of Bramwell, B., in *Holmes* v. *Mather*, *supra*. Neither *Holmes* v. *Mather* nor *Stanley* v. *Powell* is binding on this court, but I see no reason to differ from the conclusions arrived at in those cases."

This decision of the Court of Appeal can also be said to have established two common law principles which are of especial application to underground cables. The first deals with the position where a cable is laid without proper authority and was expressed by Singleton, L.J., as follows: " The cable was in land of Glamorgan county council. The county council employed the defendants to make a trench. They gave them a plan. The cable was not shown on that plan. The county council did not know of the cable. There is no evidence whatever to show that the plaintiffs or their predecessors had any licence or permission to put that cable in the place in which it was put. As I have said, *prima facie* the cable is there wrongfully. If someone puts his car in my garage, I am entitled to remove it. If I do so, I do not commit a trespass, nor does anyone whom I employ to remove it. I am entitled to dig a hole in my land. If someone, without permission or without my knowledge, has put something on my land and I accidentally remove it, that is not a trespass; he had no right to put it there." Again, Morris, L.J., stated the matter in the following terms: " If somebody is lawfully digging on his own land and someone else comes and interposes an article between the spade as it is descending and the ground, so that the article is damaged, and damaged without any intention on the part of the person digging, it cannot, in

my judgment, be said that the latter was guilty of a trespass. It would be a case within the illustration given in *Weaver* v. *Ward, supra*. The position, in my judgment, would be no different if someone, without the permission or knowledge of the owner of the land, buried an article under the soil in a place where the owner would be perfectly entitled to dig. If he did so dig and unintentionally damaged the thing which had been buried without his knowledge or permission, it could not, in my judgment, be said that the occurrence was the fault of the owner of the land rather than the fault of the owner of the thing."

The second principle concerns the effect of providing contract plans to which the contractor has to work. In this connexion, Donovan, J., is reported to have said: "The plan received by the first defendants from their principals, the Glamorgan county council, showed no electric cable beneath the land in question. Usually, as one would expect, all underground cables are shown on the contract plans to which the contractor has to work. To the extent that no such cable is shown on the plan, the practice of contractors is to assume that none exists, unless of course there is some evidence on the site visibly contradicting the plan in this respect." And Singleton, L.J., made the following comment on this aspect of the matter: "I regard it as of the greatest importance that, when any contractor strikes a cable, it is his duty to let it be known in some way, so that information will reach the owners of the cable, who in turn may be able to avoid much damage or possibly to avoid a serious accident."

(*To be continued*)

MISCELLANEOUS INFORMATION

BRIGHTON PROBATION REPORT

Apart from the usual tables of statistics, the report of Mr. Hugh Sanders, senior probation officer for the county borough of Brighton, contains some reflections on present day standards of conduct, and of honesty in particular. Mr. Sanders feels that in the minds of many people today the commandment "Thou shalt not steal" is subject to the exception "unless it is from your employer, a nationalised industry or the tax collector," and that too often group interests take precedence over everything else. As he says, it is a difficult task to teach absolute values under such conditions.

The report recognizes the improvement that has taken place in the methods of dealing with offenders, especially in ascertaining facts about the offender as well as about the offence. The efficacy of probation, says Mr. Sanders, is now well established, and the courts have realized that the best protection for society from the criminal is his readjustment and education. This is generally true, but, as Mr. Sanders states there are certain individuals who can only be dealt with in a controlled environment. We might put it more bluntly and say that for persistent and determined criminals a long sentence of imprisonment is the only safe method of treatment. Still dealing with recidivists, there is an interesting note on the progress of the Bristol hostel scheme, under which men undergoing preventive detention are prepared for discharge by living in a hostel within the precincts of the prison, living and working as far as possible like free men. They work for employers and are paid the rate for the job, paying for board and lodging and helping to maintain dependants. Mr. Sanders emphasizes the pressing need for after-care in this type of case.

Under the heading of "Preventive Case Work" Mr. Sanders refers to the lack of responsibility of many people seeking help. "Husbands or wives seek release from their marriage agreements without compunction, parents demand the removal of children who are behaving badly and on the economic level many are becoming involved in large credit transactions far beyond their means."

Of the children who are brought to the probation officers as being difficult, many appear to be what is usually described as maladjusted and might be dealt with in special schools. "Perhaps some of the admirable approved schools which are being closed could be used for this purpose ? Many of these children need never move to the delinquent stage, and become exposed to the risk of developing into the recidivists of the future, if they could be dealt with in the early stages of the maladjustment."

COUNTY BOROUGH OF TYNEMOUTH: CHIEF CONSTABLE'S REPORT FOR 1955

The crime figures show a slight increase on those for the previous year, 745 compared with 701. Of the 745, 483, or 65 *per cent.*, were detected. There was a very satisfactory detection rate for breaking offences, 40 out of 76 being detected.

274 people, of whom 117 were juveniles, were prosecuted for the 483 offences. The report draws attention to the fact that the figure of 745 crimes is the second highest ever recorded in the borough, but it is at least satisfactory that the number of breaking offences has decreased. To maintain this reduction the chief constable asks the public to make their premises as secure as possible before leaving them and *not* to leave large sums of money in unoccupied houses or shops. He states that two great deterents to the present day "breaker" are difficulty in obtaining entry, with the risk of his having to make a good deal of noise in doing so, and no reward by way of ready cash when he does force his way in.

The number of juveniles prosecuted for indictable offences (117) showed an increase of 37 on the 1954 figure. Of these 117, 73 were dealt with by probation or by absolute or conditional discharge.

For non indictable offences 1,200 persons (238 more than in 1954) were prosecuted, there being 1,139 convictions. The number of prosecutions for drunkenness (193) has only twice been exceeded since 1937. There were 21 prosecutions for offences against s. 15 of the Road Traffic Act, 1930, an increase of seven on 1954. All the 21 were convicted. This is an increase which must cause some disquiet in the borough since the seriousness of this particular offence cannot be overlooked.

There were 39 more accidents and 58 more people were injured than in 1954. The figures for 1955 were 220 accidents and 273 persons killed or injured. Included in this last figure are 71 children under 15, and it is noted with regret that one more child was killed and five more injured who were under seven years of age. Attention is called to the responsibility of those who have the care of such young children for seeing that they are not allowed in the streets without some supervision. It can be pointed out in this connexion that to expose children under seven to the risk of burning by unguarded fires is an offence, and the risks of injury run by such young children in the streets today are often not much less than those sought to be prevented by s. 11 of the Children and Young Persons Act, 1933, as amended by the 1952 Act. Another matter on which parents ought to exercise more supervision and control is that of defective cycles, particularly those with inefficient brakes. Such matters as these are still the proper responsibility of parents even in these days when it is sought to shift so much of what should be parental responsibility on to other shoulders.

The authorized establishment of the force was increased in September, 1955, by 10, making the total 129. The actual strength on December 31, was 119, and three of these were "non-effective" from the borough's point of view, one being seconded to the police training centre as in instructor, and two to the Malayan police service.

Sickness made considerable inroads into the available manpower, 1,629 days being lost during 1955, compared with 1,492 in 1954. Fourteen recruits (one of whom resigned after eight weeks) were accepted during the year, and one constable transferred to the force from the Northumberland county force.

The special constables numbered 142, including three women. During the year they continued to give valuable help to their regular colleagues, including beat duty in company with regular police and duty at parliamentary and municipal elections. This body of volunteers, rather larger than the regular force, must be of very great assistance at times when extra manpower is required.

CLEANSING COSTS, 1954/55

The Ministry of Housing and Local Government have published recently a summary of the costing returns furnished by the larger urban authorities in respect of their public cleansing services for the year 1954/55. The publication includes 10 tables, eight of which summarize main features of refuse costs: the two remaining give for each individual authority costs of collection and disposal of house and trade refuse, and costs of street and gully cleansing.

The summarized eight show for house and trade refuse:

1. Amounts collected, compared according to actual weighing, by the classes of authorities concerned (county boroughs, metropolitan boroughs, non-county boroughs and urban districts) over a period of three years. A distinction is made in this and other tables between those authorities that weigh 80 *per cent.* or more and those who weigh less: the Ministry point out that this distinction is most important

when endeavouring to base conclusions of practical value upon the figures shown in the tables. There is a tendency to over-estimate tonnages when weighing is not carried out and the Minister again commends the suggestion which he made last year that, where it is impracticable to arrange for refuse to be weighed, estimates of tonnage might well be based on the latest available figures of actual yields in comparable areas.

2. Amounts collected, ranged according to size of authority.

3. Range of costs for three years showing separately for collection and disposal as well as a combined figure for collection and disposal together the highest and lowest for each class of authority in units of cost per ton, per 1,000 population and per 1,000 premises.

4. Unit costs per ton per 1,000 population and per 1,000 premises for three years, divided according to size of authority.

5. Unit costs per ton of labour and transport divided again according to population, for three years.

6/7. Unit costs per ton of collection and disposal respectively again on the same basis of division and for the same period.

8. Income from salvage. Amounts collected have declined over the triennial period from 647,000 tons to 550,000 tons and receipts from £3,008,000 to £2,803,000.

The expenditure of all local authorities in England and Wales falling on public funds in 1953/54 (the latest year for which full particulars are available) in respect of the collection and disposal of refuse was £22 million and in respect of street cleansing £10 million. The corresponding figures for the two previous years were:

	Refuse collection and disposal	*Street cleansing*
	£m.	£m.
1952/53	21	9
1951/52	17	9

Over 20 years ago at one of the annual meetings of the Institute of Municipal Treasurers and Accountants, Sir Gwilym Gibbon, a notable civil servant much concerned with the overall picture of local government as seen from Whitehall, was referred to as costings mad. He replied that he was sorry that he could not bite all the members of his audience—with no Pasteur present to administer an antidote. With continually mounting expenditure the importance of proper costing becomes continually greater and the information in the Ministry publication provides a most valuable starting point and basis for cost investigation.

KENT ACCOUNTS, 1954/55

Kent is one of the counties which have never received any equalization grant and will still be denied it when the revaluation figures operate. The county has campaigned for an alteration of the system of distribution, its arguments doubtless including comparisons similar to those we give here:

	Year 1953/54		
County	Durham	Stafford	Kent
	£	£	£
Gross expenditure ..	13,500,000	12,800,000	22,100,000
Equalization grant ..	3,300,000	3,300,000	Nil
Expenditure met by ratepayers	2,100,000	1,900,000	10,000,000
Ratepayers' contribution per head of population	2·3	2·2	6·4

Are the Kent ratepayers really three times as well off as their brothers in the Midlands and the North ?

As county treasurer J. L. Hampshire, F.S.A.A., F.I.M.T.A., shows in his summary of the county's finances, the county council have, within the field of manoeuvre open to them, done all that was possible to limit the calls on the ratepayers. During the five years up to and including 1954/55, £740,000 has been taken from balances and the balance sheet at March 31, last, shows that revenue balances amounted to only £908,000, of which £520,000 was tied up in plant and stores, and that revenue cash held was practically non-existent at £73,000. The total precept for 1954/55 was 17*s.* 11¼*d.*

As is common the education service accounts for half of the total rate burden.

Mr. Hampshire quotes interesting unit costs in his summary. We observe that it cost rather more to look after children than old people, as these figures demonstrate:

	Cost per week	
	Children's Homes	*Welfare Hostels*
	£ *s.* *d.*	£ *s.* *d.*
Homes over 15 but not exceeding 30 persons		4 15 6
Homes over 12 but not exceeding 30 children	5 2 11	
Homes over 30 but not exceeding 50 persons		4 7 7
Homes over 30 children	4 12 0	

And, of course, it is generally true that the smaller the home the greater the cost per week.

Ambulance mileage in Kent increased slightly as compared with the previous year: this has been a common experience but in a number of authorities, particularly those where wireless control operates, mileage has fallen in the current year.

Loan debt of the county stood at £18 million at the year end, equal to £12 per head of population. Average rate of interest paid was 3·7 *per cent.*—happy days of yore !

Investments owned cost £4,900,000, most of which were held on superannuation account. Loans to the county council accounted for slightly over a third of the total superannuation fund investments.

CITY OF LONDON WEIGHTS AND MEASURES DEPARTMENT

The importance of the work of this department cannot be judged by the size of the area which it covers. The city of London is often referred to as the square mile, but in that square mile a vast amount of business is transacted, quite apart from several important markets which it contains. The fees received by the department during 1955 amounted to nearly £10,000.

As in other areas, the functions of weights and measures inspectors are regarded primarily as preventive and as a protection and assistance to traders no less than to customers. In his annual report Mr. Desmond Allchin, chief inspector to the city of London, says he is proud to report that during the year 1955 it was not found necessary to institute proceedings of any kind. He considers the satisfactory state of affairs evidence of both the honesty in city trading and the efficiency of constant inspection in the weights and measures service.

Referring to the additional protection against short weight or measure afforded by the Pre-Packed Food (Weights and Measures: Marking) Order, 1950, the report says

" In so far as the city of London is concerned the most important features of this order are the provisions which relate to importers and wholesalers of pre-packed food. Over 30 *per cent.* of the wholesale trade of the country is centred in Greater London, and more than a quarter of this is concentrated in the square mile of the city. According to the last Board of Trade Census of Distribution, the wholesale group of produce, provision, grocery and confectionery trades is the largest group in the city; its annual sales amounting to over £600 million.

"With a view to assisting these importers and wholesalers to comply with the provisions of this order a service is available to them whereby samples of pre-packed food are submitted to the office so that a check of their contents and marking can be made before the goods are exposed for sale throughout the country . . .

" While this service is not a statutory duty, the facilities offered do a great deal to prevent the distribution of pre-packed food which does not comply with the order. It is welcomed by the trade as a means of protection against complaints and possible prosecutions by inspectors in various parts of the country into whose area faulty pre-packed articles might otherwise be supplied."

Fuel oil assumes large proportions in relation to heating in the city: one building alone uses upwards of 10,000 gallons per week during the winter months. The fuel is delivered in road tank wagons. At present, says the report, there is no legal objection to sell by weight or volume, and giving of short weight or measure is not in itself an offence and no powers or methods are prescribed whereby inspectors of weights and measures can check quantities as deliveries are made. It is to be hoped, goes on the report, that this unsatisfactory position will be rectified when the new Weights and Measures Bill emerges as a result of the recommendations of the Committee of Inquiry on Weights and Measures legislation set up in 1948.

ADDITIONS TO COMMISSIONS

PONTEFRACT BOROUGH

Kenneth William Godson, 66 Ackworth Road, Pontefract.
Joseph Henry Pell, 40 Crest Drive, Pontefract.
Mrs. Nora Robina Young, Starfield House, The Mount, Pontefract.

PORTSMOUTH BOROUGH

Arthur George Bradburn, 28A Merton Road, Southsea.
James Cecil Bloomfield, 185/187 Fratton Road, Portsmouth
Henry Edward Collins, Five Trees, Soberton, Southampton.
George Albert Day, St. George, 47 Eastern Parade, Southsea.
Mrs. Ethel Mack, 57 Northern Parade, Portsmouth.
Sidney Wilfred Messenger, 12 Clarence Parade, Southsea.
Joseph Albert Nye, 25 Randolph Road, Portsmouth.
James Stewart, 39 Outram Road, Southsea.

WALSALL BOROUGH

Rodney Loseby Patterson, Glendower, Stoney Lane, Bloxwich, Walsall.

GLEANINGS FROM THE PRESS

Newcastle Journal. February 22, 1956

HE CHANGES HIS MIND

William H. Davies (62), *of Maplewood Avenue, Sunderland, who chose, on Monday, to go to Durham quarter sessions for trial, had changed his mind yesterday, and told South Shields magistrates he wished to be dealt with summarily.*

He pleaded guilty to three charges of obtaining money by false pretences, and asked for four similar cases to be taken into consideration.

He was sent to prison for six months on each charge, the last two sentences to run concurrently. Councillor R. Bainbridge, the chairman, said: "You are a plausible rogue and the public must be protected from you."

This man was charged with offences contrary to s. 32 (1) of the Larceny Act, 1916, and therefore came within the provisions of s. 19 of the Magistrates' Courts Act, 1952, which deals with the summary trial of adults for certain indictable offences.

Apparently he had at first intimated that he wished to be tried by a jury. Then, later, he changed his mind and asked for summary trial. There is nothing to prevent that being done. Subsection (2) of s. 19 provides that the accused may be given his election "at any time during the inquiry into the offence," and subs. (5) provides that the court may proceed summarily "if he consents." Once he has been cautioned as provided by subs. (5) he may be tried summarily at any time during the inquiry into the offence, if he consents, even if at first he has elected to be tried by a jury.

If, however, this man had at first elected to be tried summarily and later asked to be committed for trial the court could not have acceded to his request. Section 24 of the Magistrates' Courts Act, 1952, provides that "except as provided in subs. (5) of s. 18 of this Act, a magistrates' court, having begun to try an information for any indictable offence summarily, shall not thereafter proceed to inquire into the offence as examining justices." Subsection (5) of s. 18 has nothing to do with this case. It provides that where a court of summary jurisdiction has been dealing summarily from the outset, on the application of the prosecution, with an offence that is by virtue of any enactment both an indictable offence and a summary offence, it may at any time before the conclusion of the evidence for the prosecution discontinue the summary trial and proceed to inquire into the information as examining justices. With that one exception once a magistrates' court has begun to try a case summarily it must continue to do so.

Manchester Guardian. February 21, 1956

FINE FOR SKATING IN RICHMOND PARK

Man Calls Ban "Illegal"

Jan Bevington Gillett (40), *a botanist, of Pensford Avenue, Kew, gave notice of appeal at Richmond yesterday when he was fined £2 for skating on a pond in Richmond Park and £2 for obstructing park-keepers in the execution of their duty. Gillett, who pleaded not guilty, told the court he had allowed himself to be arrested so that he could protest against the "illegality" of forbidding skating in a Royal park.*

Patrolman Smee said that on two occasions on Saturday, Gillett refused to stop skating on the Leg of Mutton Pond in Richmond Park when told to do so. On the first occasion, he and another keeper went on the ice in an effort to persuade Gillett to leave. Gillett retreated from them and fell through the ice at the shallowest part of the pond. Later, when he returned to the pond, they tried to sweep him off the ice with a rope, but he jumped over this and "did a war dance."

Richmond Park is one of the Royal parks vested in or under the control or management of the Minister of Works regulated by the Parks Regulation Acts, 1872 and 1926.

Regulations now in force for the control of the various Royal parks have been made under s. 2 of the 1926 Act, and that section provides that any person failing to comply with, or acting in contravention of, the regulations, shall be liable to a penalty not exceeding £5.

A park-keeper in uniform and any person he may call to his assistance may arrest without warrant any person offending against the regulations within his view, provided he does not know and cannot ascertain the offender's name and address (s. 5, 1872 Act). In addition to that he has, within the limits of the park, all the powers, privileges, immunities, duties, and responsibilities a police constable has within the police district in which the park is situated (s. 7). Conversely, by s. 8, a police constable belonging to the police force of the district in which the park is situated has the powers, privileges and immunities of a park-keeper within the park.

Richmond Park is within the Metropolitan Police District and a park-keeper there is, in effect, a metropolitan police officer, by virtue of s. 7. Section 6 provides a penalty not exceeding £20 or imprisonment not exceeding six months for assaulting a park-keeper in the execution of his duty. No penalty is provided in the Parks Regulation Acts for obstructing a park-keeper, but proceedings for that offence could be taken under s. 12 of the Prevention of Crimes Act, 1871, as extended by s. 2 of the Prevention of Crimes Amendment Act, 1885, which provides a penalty not exceeding £5 for obstructing a police officer when in the execution of his duty.

Herts Advertiser. February 24, 1956

DIVORCE QUERY

John Stewart O'Neill, who said he lodged at 32 Longmire Road, St. Albans, was summoned at St. Albans City Sessions on Tuesday for being £534 10s. in arrear under a maintenance order made at Newnham, Gloucestershire, in November, 1948.

It was stated that O'Neill was ordered to pay £1 10s. a week for his wife and 10s. a week in respect of each of his two children.

The case was adjourned until April 19, so that O'Neill could find out whether the order had ceased after his wife divorced him.

He said he had understood that after the divorce, which took place when he was in hospital, he had not to make any more payments.

He was told to pay £2 10s. weekly during the adjournment.

A maintenance order is not discharged by the making of a decree absolute on the wife's petition. It remains in force, but it may be varied or revoked by a competent court of summary jurisdiction.

The Divisional Court in *Bragg* v. *Bragg* (1925) P. 20, thought that it was very convenient that orders for custody and maintenance should subsist, and that a court which was close at hand to the parties should be able to give the wife assistance if she needed it, or give the husband relief if he was entitled to it.

The magistrates' court will of course discharge an order if the Divorce Court has made an order for alimony in such a way as to show that it supersedes the summary maintenance order, but the present practice of the Divorce Court is not to make an order for alimony until any prior order of the justices has been revoked.

It was held in *Kilford* v. *Kilford* [1947] 2 All E.R. 381, that the wife must elect, either to retain the order of the justices, or to apply to the justices to have that order discharged and seek an order in the Divorce Court. That case was followed in *Ross* v. *Ross* [1950] 1 All E.R. 654.

In *Pooley* v. *Pooley* [1952] 1 All E.R. 395, it was held that where a wife, who has in her favour a maintenance order made by a magistrates' court includes in a petition for divorce a claim for alimony *pendente lite*, she may apply to the magistrates' court to discharge the order since she cannot have two concurrent maintenance orders, and the jurisdiction of the magistrates in dealing with her application does not conflict with the jurisdiction of the Divorce Court.

[We would draw attention to "Concurrent Jurisdiction" at p. 176, *ante.—Ed., J.P. and L.G.R.*]

Newcastle Journal. February 16, 1956

ROAD SIDE IS STILL A ROAD

John William Gibson, a gardener, parked his motor cycle without lights on cobblestones in Alnwick. That started a legal argument.

The cobblestones are at the side of Market Street, and, although not used by traffic, police said that Gibson was breaking the law by parking without lights on a road.

But at Alnwick magistrates' court yesterday, Gibson, who lives at The Bothey, Castle Gardens, was given an absolute discharge.

Similar

The chairman, Sir Leonard Milburn, said: "We have been advised that a road in law is any road to which the public have access. The place where this vehicle without lights was, is, therefore, in law, a road.

"It is the duty of the police to bring these cases to the court, but, at the same time, we feel that these cases must be seen in the light of local conditions.

"In the ancient town of Alnwick there is a highway proper, through which traffic passes, and in many places that area is fringed by areas of cobblestones, on which traffic does not pass."

Norman Turnbull, (34), *a miner of Alwynside, Alnwick, was given an absolute discharge for a similar offence.*

There is no doubt that this man left his motor cycle on a " road." " Road " is defined in s. 15 of the Road Transport Lighting Act, 1927, as " any public highway and any other road to which the public has access." The definition of " road " in s. 121 of the Road Traffic Act, 1930, is " any highway and any other road to which the public has access, and includes bridges over which a road passes."

In *Bryant* v. *Marx* (1932) 96 J.P. 383, it was held that the word " road " as used in the Road Traffic Act, 1930, included the footway as well as the carriageway. In *Bugge* v. *Taylor* (1941) 104 J.P. 467, an unlighted vehicle was left in the forecourt of a hotel. The forecourt was the private property of the owners of the hotel, and the public had no access to it as of right, but there was no obstruction of any kind separating the forecourt from the High Street of the town, and members of the public had used the forecourt without let or hindrance, not only to reach the hotel, but also as a short cut from the High Street to another street, and on occasions vehicles had been over and through it. The justices held that the forecourt was a " road " within the meaning of s. 15 and that the owner of the vehicle was, accordingly, guilty of a contravention of s. 1. On appeal by Case Stated it was held that the justices were right. *Bugge* v. *Taylor* was distinguished in *Thomas* v. *Dando* [1951] 1 All E.R. 1010; 115 J.P. 344. In that case the respondent was convicted by the stipendiary magistrate at Cardiff of an offence against the Road Transport Lighting Act, 1927, s. 1 (1), in that he had caused an unlighted motor car to be on a road, within the meaning of the Act, during the hours of darkness. He had left his motor car unlighted on an unpaved forecourt, which adjoined his garden and shop and was his private property. The forecourt was separated from the highway by a pavement, but, at the material time, no wall or fence separated the forecourt and the pavement. The respondent's customers were in the habit of crossing the forecourt to enter his shop, but the public did not habitually use it. On appeal by Case Stated it was held that the unpaved forecourt on which the car was standing at the material time was not a " road " within the definition in s. 15 of the Act of 1927, and, therefore, the respondent had not committed an offence against s. 1 (1) of the Act. In *Buchanan* v. *Motor Insurers Bureau* [1955] 1 All E.R. 607; 119 J.P. 227, a case in which the question as to what constituted a " road " within the meaning of s. 121 of the Road Traffic Act, 1930, arose, *dicta* of Lord Clyde in the Scottish case of *Harrison* v. *Hill* (1932) S.C. (J.) 16 were applied. In that case Lord Clyde said, " It is, I think, a certain state of use or possession that is pointed to. There must be, as matter of fact, walking or driving by the public on the road, and such walking or driving must be lawfully performed—that is to say, must be permitted or allowed, either expressly or implicitly, by the person or persons to whom the road belongs. I include in permission or allowance the state of matters known in right of way cases as tolerance of a proprietor." Lord Sands, in the same case, put the position shortly when he said, " In my view, any road may be regarded as a road to which the public have access upon which members of the public are to be found who have not obtained access either by overcoming a physical obstruction or in defiance of prohibition express or implied."

PERSONALIA

APPOINTMENTS

Mr. A. G. Dawtry, town clerk of Wolverhampton, has been selected from 59 applicants, nearly all of them town clerks, for appointment as town clerk of Westminster, in succession to Sir Parker Morris, who retires on September 17, 1956. The appointment is subject to confirmation by Westminster city council. Mr. Dawtry was appointed town clerk of Wolverhampton in September, 1953, and took up his duties on January 1, 1954. He is 40 years old. Before coming to Wolverhampton he was deputy town clerk of Leicester, and before that was deputy town clerk of Bolton. He was articled to Sir Basil Gibson, town clerk of Sheffield, was admitted in 1938, and holds the degree of Bachelor of Laws with honours of Sheffield University. During the war he was Lieut.-Colonel on the staff of Field-Marshal Alexander, being awarded the M.B.E. and T.D. and being twice mentioned in dispatches. Sir Parker Morris, the present town clerk of Westminster, was appointed in 1929 and was knighted in 1941.

Mr. D. A. Bond, assistant solicitor to the corporation of Crewe, Cheshire, has been appointed deputy town clerk of Boston, Lincs. Mr. Bond was admitted in 1947.

Mr. David Hall, senior assistant solicitor to Reading, Berks, county borough council, has been appointed deputy town clerk of Stafford. Mr. R. B. Goldbrough who held the post since 1951 is entering private practice in the borough.

Mr. David John Grundy has been appointed to the position of senior assistant solicitor in the town clerk's department of Burnley, Lancs., county borough council. He is at present assistant solicitor with the county borough of Wolverhampton and was articled to Mr. Philip Rennison, the town clerk of Bolton, Lancs.

Mr. R. H. Hall, assistant solicitor to Enfield, Middx., borough council, has been appointed assistant solicitor to Hornsey, N.8, borough council. The vacancy arose from the resignation of Mr. A. Langmaid who has left to take up an appointment with the Civil Service.

Mr. E. P. E. Hughes, at present in private practice in Cardiff, has been appointed assistant solicitor to Chelmsford, Essex, borough council. Mr. Hughes succeeds Mr. W. C. F. Godsell, who has been appointed clerk to Alton, Hants., urban district council.

Mr. E. R. White, M.A., has been appointed clerk to the justices for the city of Oxford. Since 1952 Mr. White has been clerk of the combined areas of Axminster, Crediton, Crockernwell, Collompton, Honiton and Wonford, in the county of Devon, and previously was an assistant solicitor with Wembley, Middx., borough council and Nottinghamshire and Devon county councils. He was articled to the town clerk of Aylesbury, Bucks. Mr. White is 41 years of age. Mr. Harry Myers has been appointed deputy clerk to Mr. White in the city of Oxford. This vacancy arose through Mr. Ramsay Lawton, the former deputy, being appointed as clerk to the Wrekin, Salop., justices, *see* our issue of February 11, last. Mr. Myers is first assistant to the clerk at Cheltenham, Glos., and Tewkesbury, Wilts., and was formerly at Sunderland. He also is 41 years of age. Mr. A. N. Murdoch, M.A., the clerk to the justices of the city of Coventry is acting as clerk to the city of Oxford justices until Mr. White takes up his appointment.

Mr. Peter Douglas Ashley has been appointed a probation officer serving the city of Plymouth. Mr. Ashley completed his Home Office training course on March 23 and will commence his duties at Plymouth on April 1, next.

Chief Superintendent Clement George Burrows, of the Somerset constabulary, has been appointed chief constable of Oxford. Mr. Burrows succeeds Mr. C. R. Fox, who retires on June 30, next. His present position is assistant commandant at the Police College, Bramshill House, Hartley Witney, Hants. Mr. Burrows joined the Somerset constabulary in March, 1927.

Detective Chief Inspector Ernest Jack Barkway, of the Chelmsford headquarters of Essex county constabulary, has been promoted to detective-superintendent, thus becoming the new chief in charge of the Essex C.I.D.

OBITUARY

Sir Gilbert Jackson, a former High Court Judge in Malaya, has died at the age of 81. Sir Gilbert was appointed a Puisne Judge of the Madras High Court in 1927. He retired in 1934.

Mr. George Pleydell Bancroft, clerk of Assize for the Midland Circuit from 1913 to 1946, has died at the age of 87.

NOTICES

The next court of quarter sessions for the borough of Northampton will be held on Monday, April 9, 1956, at the Court House, Campbell Square, commencing at 10.45 *a.m.*

The next court of quarter sessions for the county of Cheshire will be held on Tuesday, April 10, 1956, at the Sessions House, Knutsford. The adjourned sessions will be held at The Castle, Chester on Monday, April 16, 1956.

The next court of quarter sessions for the borough of Grantham, Lincs., will be held on Wednesday, April 11, 1956, at the Guildhall, Grantham, commencing at 10.30 *a.m.*

REVIEWS

An Introduction to Evidence. By G. D. Nokes, LL.D., Barrister-at-Law. Second Edition. Sweet and Maxwell Ltd., 2 and 3 Chancery Lane, London, W.C.2. Price 37s. 6d. net. Post 1s. 9d.

Books on evidence can be dry and difficult to read, or they can be fascinating; it all depends on the author's approach to the subject. Dr. Nokes has not been content to write a reference book and nothing more: he has given us a treatise that is sheer enjoyment to read, and yet it has all the virtues of a good text book for reference.

The bare statement of a rule of evidence may be puzzling, especially to laymen, who are apt to see frustration and unreason in some of the restrictions on the admissibility of evidence. Nearly all the rules become clear and sensible when seen in the light of their history and development. This book traces the growth of this branch of the law, sometimes for centuries, revealing changes and sometimes inconsistencies as statute and case law develop. In the result we see law and practice based always on justice and generally on logic. "The law of evidence presupposes that the tribunal is endowed with normal mental or logical faculties, one of which is an appreciation of the relation between facts, or relevance. Indeed the 'reasonable man' habitually exercises such faculties in his private affairs."

The work is not confined within narrow limits, and there is some valuable matter relating to procedure, as for example in the history of appeals, and in the manner of obtaining or receiving confessions and admissions.

The interesting and sometimes difficult question of privilege is elucidated and brought up to date, it being noted that certain privileges were recognized several centuries ago. It is this weaving of history and origin into the pattern of the law that makes everything seem clear and logical.

We welcomed the first edition in our 1952 volume, and we have little to add to what we said then, in appreciation of one of the best books on evidence that has come our way.

The American Legal System. By Lewis Mayers. New York: Harper & Brothers (Publishers). Hamish Hamilton, Ltd. (Distributors for the United Kingdom). Price 52s. net.

In dealing with topics where the law of the United States is recognizably similar to that of England there is an increasing tendency, discernible in reports and digests, for decisions of American courts to be cited here, like those of the courts of Commonwealth countries overseas. One difficulty which the English lawyer finds, in referring to such cases and weighing them for his own purposes, is the existence of parallel jurisdictions in the same territory. An outsider would be likely to suppose that the federal court operating (say) in New York was superior to the courts of New York State, but this is not so. For reasons lucidly explained at the beginning of the work before us, there have since the foundation of the United States existed State courts exercising complete jurisdiction, and also Federal courts side by side with them. It is only at the highest level, where an appeal lies equally from the State court and from the Federal court to the Supreme Court of the United States, that the federal jurisdiction overrides the State jurisdiction. So far as we are aware, this is the first time that a clear and coherent account of this dual judicial system has been presented in a moderate compass. The book runs to fewer than 600 pages and is generously spaced out, but it seems to contain everything which the reader (in this country at any rate) needs to know, when he is concerned to discover how the courts work in the United States. Apart from its main purpose, it is also a storehouse of interesting facts, which throw light upon the history and development of legal procedure in the United States. There is, for example, the curious circumstance that from historical causes the jury in a civil case in Louisiana determines law as well as facts, while in one State alone (Texas) the parties in a civil action can require that the judge shall put specific questions to the jury. There is, too, a good deal of interesting information about the possibility of illegal arrest or detention of witnesses (which varies from State to State), a possibility very familiar to persons addicted to American fiction.

The variation from State to State in regard to capital punishment, and the (rare) occurrence in federal legislation of provision for the death penalty to be imposed upon the recommendation of a jury, have topical interest in this country. The English newspapers have also noticed lately one or two curious cases of the jurisdiction of American judges to grant or refuse suspension of a sentence. This power varies from State to State, and also between State courts and Federal courts.

The learned author has some pertinent comments upon costs, another matter which is topical in England, in view of the extension of the Legal Aid and Advice Act, 1949, to county courts. It seems that the general rule that the losing party pays the winner's costs is not imposed in the United States, or at any rate not so severely as with us, and the arguments on both sides of this controversial question are fairly set out.

Under such headings as "The courts as a check on legislation"; "The courts as moulders of the law," and "The personnel of the courts," the author has many fruitful suggestions to make upon future development in the light of past history. The very tenuous constitutional structure, supporting the Supreme Court's latest decisions upon racial segregation, is exposed, but the author does not apparently consider it likely that a more limited interpretation of the words of the constitution will be forced upon the Court. In what the author says of administrative jurisdiction in his own country, there is much that is of interest to English readers. Unlike some American publications which we have had occasion to notice, this book has been put into the hands of English publishers for distribution, at a price stated in English currency, so there should be no difficulty in obtaining it. We confidently advise buying it for public libraries, and we believe that legal practitioners who are interested in the theory and practice of the law outside their day to day work will find it worth obtaining for their private reading.

A Guide to Juvenile Court Law. (Fourth Edition.) By Gilbert H. F. Mumford, Solicitor, Clerk to the Justices, Luton. Jordan & Sons, Ltd., 116 Chancery Lane, London, W.C.2. Price 12s. 6d. net.

First published in 1944, this small book has established itself as a handy, accurate and comprehensive work. Mr. Mumford has a great gift for clear and concise exposition, which is just what is wanted in a book that sets out to deal with a subject of wide range in as small a compass as possible. We have looked in vain for anything that ought to have been included and is not, and we find the plan and arrangement of the book excellent in every way.

We are glad to note Mr. Mumford takes the same view as ourselves upon a point about which there has been considerable difference of opinion. Dealing with breach of requirement by a probationer, he says: "A juvenile charged with an offence which is not triable summarily in the case of an adult, cannot, after the age of 17 be dealt with for the original offence by any court of summary jurisdiction as it would not have the power to 'just convict' him."

As it is nearly six years since the publication of the third edition and a number of important statutes have been passed in the meantime, this new edition was certainly demanded. The author quotes section references constantly and these naturally needed amendment even in cases where the law itself was unchanged.

The Forgotten Ninth Amendment. By Bennett B. Patterson. Indianapolis, U.S.A.: The Bobbs-Merrill Company, Inc. Price $5.

As will be inferred from the title, this is a book upon the constitutional law of the United States. It might be safe to suggest that every educated person in the English speaking world (and possibly elsewhere) today knew the Fourteenth Amendment by its number. Beyond that, it is doubtful whether one person in 10,000 knows what the subjects are which are dealt with in other amendments to the constitution: if citizens of the United States have "forgotten" the Ninth, people outside the United States will mostly never have known what it says. It is as follows "The Enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people." (We print the intrusive comma as it appears in the book. We have not verified it). To a reader familiar with the ordinary draftsmanship of statutes, this sentence might seem no more than a saving clause, in rather archaic language. To the learned author of the book before us, who is a member of the bar of Texas, it appears to be the corner stone of the Constitution of the United States. He regards it as making a declaration of the sovereignity and dignity of the individual, which is nowhere else declared.

A large part of the book is taken up by extracts from the Annals of Congress between 1789 and 1791, and the author sums it up by saying that, hitherto, no real purpose for the Ninth Amendment has been found. The unenumerated rights to which it refers remain to be discovered and defined. It is (according to the author) intended to limit the powers of the Federal Government, and by inference to establish the powers of the individual States, but also to preserve inherent human rights against all types of government.

Dean Roscoe Pound contributes a short introduction, commending the service that Mr. Patterson has done by calling the Ninth Amendment out of obscurity. At the present time, when the outside world can see the United States torn by fresh troubles arising out of racial relationships, the observer may find it interesting to see how the provisions of this part of the Constitution are viewed by an American lawyer.

Local Government Superannuation Administration and Procedures. By H. R. James and J. Massey. London: Institute of Municipal Treasurers and Accountants (Incorporated). Price 25s. post free.

This short book of 114 pages is described as a research study, being one of a series promoted by the Institute of Municipal Treasurers and Accountants in connexion with practical problems of local government finance. The law of local government superannuation is not discussed except incidentally. The scope of the work is to indicate how the procedure for administering superannuation funds can be simplified and be made more economical. The authors have suggested a number of forms which might be suitable for general adoption, for such purposes as supplying information; compiling records; serving notices, and many other of the objects for which written or printed documents are needed, in connexion with superannuation. They have demonstrated that the cost of administrating large funds may be relatively less than that of small ones, and this leads to the suggestion of wider use of combination schemes under the Local Government Superannuation Act, 1937. There is a chapter on the interchange arrangements operating at the present time, and a diagram showing the relationship between the public bodies concerned. This will help, in simplifying the steps to safeguard a contributor's rights when he changes his employment. The specimen forms drawn up by the authors might be useful for other purposes than those of local government superannuation. Certainly local authority treasurers, and others who are concerned with superannuation funds, will find much in the book that is useful.

WEEKLY NOTES OF CASES

HOUSE OF LORDS

(Before Viscount Simonds, Lord Reid, Lord Tucker, Lord Keith of Avonholm and Lord Somervell of Harrow)

CITY OF GLASGOW CORPORATION *v.* WESTERN HERITABLE INVESTMENT CO., LTD.

January 23, 24, March 1, 1956

Housing—Promotion by local authority of construction of houses—Special conditions for annual subsidy to builders—Contract by builders with local authority including special conditions—Right of builders to sell houses without consent of Minister—Housing (Financial Provisions) Act, 1924 (14 *and* 15 *Geo.* 5, *c.* 35), *s.* 3 (2).

APPEAL by the corporation from an interlocutor of the Second Division of the Court of Session.

In 1926 the appellant corporation issued a statement setting out the terms and conditions on which they were prepared to grant financial assistance to private enterprise in the building of houses, and stating that for houses erected for letting they were prepared to make a maximum grant of £13 10*s.* per house for a period of 40 years. The houses had to comply *inter alia* with condition (*c*) of s. 3 (2) of the Housing (Financial Provisions) Act, 1924, which provides that no house in respect of which a subsidy has been paid to the builder shall be sold without the consent of the appropriate Minister. Between 1926 and 1933 the respondents built some six thousand houses in Glasgow and in respect of these houses entered into a contract with the appellants based on the appellants' statement of 1926 under which the appellants paid an annual subsidy in respect of the houses, part of which they received from the Secretary of State for Scotland. In compliance with the conditions, the respondents let, and, as they became vacant, re-let, the houses up to 1953, when they applied to the Secretary of State for his consent to the sale of the houses, which consent was refused. The appellants contended that the refusal operated as an absolute bar to the sale of the houses by the respondents although the houses were the respondents' absolute property.

Held, (i) the respondents were entitled to sell the houses without the consent of the Secretary of State, since the only purpose of the conditions laid down by s. 3 (2) of the Act was to enable a subsidy in respect of the houses to be paid, the only result of non-compliance with the conditions being that the subsidy would be discontinued or reduced; (ii) on the true construction of the contract between the appellants and the respondents, the subsidy would be paid so long as the terms of the contract were complied with, and, if they were not complied with, the respondents would cease to receive the subsidy, but would not be prevented from selling the houses.

Appeal dismissed.

Counsel: *R. S. Johnston, Q.C.*, and *Douglas Reith* (both of the Scottish Bar) for the appellants; *the Dean of Faculty* (*C. W. Graham Guest, Q.C.*), and *A. M. Johnston* (both of the Scottish Bar) for the respondents.

Solicitors: *Martin & Co.*, for Town Clerk, Glasgow, and *Campbell, Smith, Mathison & Oliphant*, Edinburgh; *Stilgoes*, for *Breeze, Paterson & Chapman*, Glasgow, and *Gray, Muirhead & Carmichael*, Edinburgh.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Hilbery and Devlin, JJ.)

RE RUTTY

March 9, 1956

Mental Defective—Detention under order of judicial authority—Person "found neglected"—Mental Deficiency Act, 1913 (3 *and* 4 *Geo.* 5, *c.* 28), *s.* 2 (1) (*b*) (i).

APPLICATION for *habeas corpus*.

On December 9, 1948, a magistrate, duly appointed and acting as the judicial authority under the Mental Deficiency Acts, 1913–1927, heard a petition by the supervising officer of the Essex county council alleging that the applicant, Kathleen Rutty, was a mental defective subject to be dealt with under the Acts and asking for a reception order directing her to be detained in an institution for mental defectives.

On the hearing of the petition the magistrate found that the applicant, being a feeble-minded person, was a defective within the meaning of the Acts and that she was subject to be dealt with under the Acts by reason of her being "found neglected" in June, 1948, within the meaning of s. 2 (1) (*b*) (i) of the Act of 1913. The relevant facts as they existed in June, 1948, were as follows. When three months old, the applicant had been placed by her mother in a poor law institution in Essex. She had been cared for and brought up by the poor law authorities, and had been sent to ordinary schools. After leaving school at the age of 15, she had been employed in various ways, but had not given satisfaction. By June, 1948, she was 17 years of age and there was no power to detain her in the poor law institution. She had £19 saved from her wages. She was still an inmate in the institution, but it was feared that she was about to remove herself and there was evidence that she was a borderline high-grade mental defective. The magistrate ordered the applicant to be sent to the Royal Eastern Institution, Colchester, to be detained there or in any other institution to which she might be transferred in accordance with the regulations for the time being in force under the Acts. Since December 9, 1948, the applicant had been in institutions in the care and under the control of the Essex county council and the Board of Control. After a period of stabilization and training she was given leave of absence on licence, first to an aunt, then to a private nursing home and hospital, and, finally, to her half-brother, with whom she was still on licence.

The applicant applied for a writ of *habeas corpus*, alleging that the order of December 9, 1948, was *ultra vires* the Act of 1913, inasmuch as she was not then a person subject to the Act who could be dealt with on such a petition and that there was no evidence on which the magistrate could properly find that she was such a person. The return to the writ was made by the physician superintendent of the Royal Eastern Counties Hospital and the Board of Control, and stated that the applicant was detained by virtue of the order of December 9, 1948, which, it was said, contained the grounds for the making of it and was on its face a valid order.

Held, (i) that the Divisional Court had power to receive affidavit evidence in order to decide whether there was any such evidence before the judicial authority as would justify its finding that it had jurisdiction to deal with the matter and make an order; (ii) that the words "found neglected" in s. 2 (1) (*b*) (i) of the Act of 1913 must be construed as meaning physically suffering from a lack of essentials through want of reasonable care, and must be intended to be applicable to a condition which was already in existence and not to a future condition, so that the local authority was not empowered to act merely because a mental defective needed care and training which could not be provided in his home; (iii) that there was, therefore, no evidence before the judicial authority that the applicant was a mental defective "found neglected," and that, therefore, the writ must issue and the applicant be discharged.

Counsel: *Platts-Mills* for the applicant; *Mrs. E. Underhill* for the stepbrother of the applicant; *Rodger Winn* for the Board of Control and other respondent authorities; *Hines* for the judicial authority.

Solicitors: *Robert K. George; Solicitor, Ministry of Health; W. J. Piper*, Chelmsford.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

A DARK HORSE

The case of *Maclean* (*Inspector of Taxes*) v. *Trembath* (*The Times*, March 15 and 16) is a reminder that the law relating to income tax is not so invariably dull a subject as it may, to the uninitiated, appear. The Crown had appealed against a decision of the Special Commissioners whereby the respondent, a company director, was allowed the sum of £980 as a deductible expense under r. 7 of sch. 9 to the Income Tax Act, 1952. The company deals in refrigerating equipment, and the sum in question was spent by the respondent and his wife (she also being a director) in connexion with a visit to Australia for the purpose of gaining knowledge and experience of the refrigeration and distribution methods there in use.

There is a somewhat anachronistic flavour about the words, in r. 7 of sch. 9 above-mentioned, which we italicize below:

> " If the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments thereof the expenses of travelling in the performance of the duties of the office or employment, *or of keeping and maintaining a horse to enable him to perform the same*, or otherwise expend money wholly, exclusively and necessarily in the performance of the said duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed."

A twentieth-century poet has given us the well-known lines:

> " I know two things about the horse,
> And one of them is rather coarse."

We have frequently wondered what the second thing was; now we know.

That apocryphal history, *1066 and All That*, tells us that " memorable among the Saxon warriors were Hengist and his wife (or horse) Horsa." Such uncertainty is to be expected about events before the Conquest. One would imagine, however, that by the year 1952 there must have been comparatively few surviving commercial men, in the City of London or elsewhere, who were " necessarily obliged to incur and defray the expenses . . . of keeping and maintaining a horse " to enable them to perform their administrative duties. William Cowper has immortalized an equestrian exploit in the *Ballad of John Gilpin* —" a linen-draper bold " and " a citizen of credit and renown;" though that somewhat unsatisfactory episode, between Edmonton and Ware, arose not out of any compelling commercial necessity, but from a very laudable desire to celebrate his wedding-anniversary in a suitably impressive manner. There is no evidence that he and his spouse occupied co-directorships in any private company; the choice of a horse as a means of locomotion, on that particular occasion, seems to have been completely disinterested.

We have referred at some length to this negative precedent because, if ever there was a poet who had a strong incentive to point a legal moral, that poet was William Cowper. His grandfather had the unique distinction of being tried for his life on a charge of murder, and surviving to become a Judge of the Court of Common Pleas; his elder brother held office as Lord Chancellor of England. The poet himself, at the age of 18 was clerk to a Holborn solicitor; his fellow-clerk was the future Lord Chancellor, Thurlow. Five years later Cowper was called to the bar and was subsequently appointed a commissioner of bankrupts. Had there been, in the Gilpin story, any useful guidance on this question of the exemption of travelling expenses from income-tax, there is no doubt that he would have brought it to our notice.

This excursion into literary history is not so digressive as at first sight appears. The learned Judge who was hearing the appeal in *Trembath's* case, struck with the incongruity between the quoted words of the rule and the details of the respondent's expenditure (sea-passages, air-transport and hotel accommodation), enquired of Counsel whether it was argued that the term " horse " might include an aeroplane. Counsel expressed his dissent, but added the cryptic words—" I think it was put in for the relief of archdeacons." This inspires us to another digression, for which we crave the reader's indulgence.

Somebody once defined an archdeacon as " one who performs archidiaconal functions." The office is, at any rate, of great antiquity; as far back as the sixth century its holder had important administrative duties of visitation and supervision, being particularly responsible for the good order of the lower clergy, the upkeep of ecclesiastical buildings and the safeguarding of church furniture. To this day he is called upon to inspect all the churches of the diocese, to see that the fabric is kept in repair; and to hold annual visitations of the clergy and churchwardens of each parish, to ascertain that the former are in residence and to admit the latter into office. He presents candidates for ordination to the bishop of the diocese, and inducts the clergy into the temporalities of their benefices. With these diverse and peripatetic duties laid upon him, it is not surprising that he might have found the " keeping and maintaining of a horse " a very real necessity for their proper performance.

Thus the romantic byways of history lead one into strange places—even into the bleak and forbidding territory of sch. 9 to the Income Tax Act.

A.L.P.

BOOKS AND PAPERS RECEIVED

Development of Local Government in the Colonies. Report of a conference. Queen's College, Cambridge. 1955. London: Haldane House, 76a New Cavendish Street, London, W.1. Price 7*s*. 6*d*. (5*s*. to members of the Royal Institute of Public Administration).

County Court Costs. " Oyez " Table of Reminders with notes by R. B. Orange. London: Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, W.C.1. Price 1*s*. 6*d*.

The River Boards' Association Year Book, 1955. London: 15 Great College Street, Westminster, S.W.1. Price 3*s*. 1*d*.

Kent River Board: Fifth Annual Statutory Report to March 31, 1955. Maidstone: River Board House, London Road, Maidstone.

Capital Punishment as a Deterrent and the Alternative. By Gerald Gardiner, Q.C. Victor Gollancz, Ltd., 14 Henrietta Street, Covent Garden, London, W.C.2. Price 6*s*.

Taylor's Principles and Practice of Medical Jurisprudence. Eleventh edition. Edited by Sir Sidney Smith, C.B.E., Ll.D., M.D., and Keith Simpson, M.D. Volume I. J. and A. Churchill, Ltd., 104 Gloucester Place, London, W.1. Price 70*s*. net.

Food Standards Committee (Ministry of Agriculture, Fisheries and and Food) Report on Copper. Revised recommendations for limits for copper content of foods. H.M. Stationery Office. Price 6*d*. net.

Children Services Statistics, 1954–55. Published jointly by the Institute of Municipal Treasurers and Accountants (Incorporated), 1 Buckingham Place, Westminster, S.W.1., and the Society of County Treasurers, Shire Hall, High Pavement, Nottingham. No price stated.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Food and Drugs—*Unsound food—Order for destruction—Procedure—Appeal.*

On October, 1, 1955, the sanitary inspector of the rural district council condemned the carcass of a cow which had been sent to the local licensed slaughter-house.

The owner of the cow having been notified, objected, and on October 6, the inspector informed him that he would bring it before a magistrate under the provisions of s. 10 of the Food and Drugs Act, 1938, on October 7. The clerk to the local authority met a magistrate in a club and arrangements were made for him to do this on October 7. This arrangement was made without my knowledge as clerk to the justices and no record would have appeared in the court register. On that morning, however, the magistrate who had been asked decided that he should not be present unless I was there and he sat as a court.

On the afternoon of October 10, however, the carcass was taken before a magistrate who with me present sat as an occasional court and heard evidence given by the inspector and the local medical officer of health. The owner was not present. He and his solicitor were not notified until the morning of the 10th but decided that as, in any case, the carcass would at that time be unfit, no useful purpose would be served by their attending. The magistrate had no hesitation in pronouncing it unfit and an appropriate entry was made in the court register.

Notice of this finding was given to the owner and his solicitor. At the time of giving notice, I was under the impression that the owner had a right of appeal to the justices in petty sessions under s. 87 and accordingly put a note to this effect at the foot of the Notice of Finding as provided for in s. 87 (3).

Since then, I have had an opportunity of considering the matter further and am now of opinion that s. 87 does not apply to the procedure under s. 10 and that, in fact, the owner has no right of appeal. The owner's solicitor, however, has now served notice of appeal to the justices in petty sessions assembled.

I shall be grateful for your early views:

1. As to whether there is any right of appeal to the justices and, if so, to whom should a summons be addressed and in what form.

2. Whether s. 10 envisages a magistrate being called in informally or whether he should sit as an occasional court so that the proper records may be entered in the court register and any fees paid.

SEASTER.

Answer.

1. No, s. 87 does not apply. We think there is an appeal to quarter sessions against the order of the justice under s. 88. If notice of appeal to quarter sessions is given it will be for quarter sessions to decide whether it has jurisdiction.

2. We do not think he need sit in open court, nor need he sit in a petty sessional courthouse or an occasional courthouse. We think, though we are by no means certain, that when acting under s. 10, *supra*, he is within the definition of "court of summary jurisdiction" (Interpretation Act, 1889) and of "magistrates' court" (Magistrates' Courts Act, 1952), but he is not hearing an information or a complaint. Compare s. 98, Magistrates' Courts Act.

2.—Housing—*Clearance areas—Buildings formerly but not recently inhabited.*

A small area comprises six houses, all of which are unfit for human habitation and it is considered desirable that all the buildings should be demolished. Two of the houses, however, have not been used for human habitation for a period of some five years, since the owner informally agreed not to let them again for that purpose. At the present time they are let for storage purposes, and your opinion is sought as to whether these two properties may properly be included in a clearance order to be submitted for approval to the Minister.

PROWIN.

Answer.

No, in our opinion. They have ceased to be houses within the Act; *see* Housing Act, 1936, sch. III, para. 2.

3.—Housing Act, 1936—*Recovery of possession of building occupied after demolition order.*

We have been instructed to issue process against the occupiers of two houses in respect of which a clearance order was made and confirmed, ordering the demolition of certain buildings and property, including the two houses in question. The two occupiers were served with the appropriate notices in accordance with the Housing Act, 1936, requiring them to vacate the buildings, and they were also offered alternative accommodation, but they nevertheless continue in occupation and refuse to leave. The council therefore wishes to apply to the magistrates for the issue of their warrant, ordering the premises to be vacated in accordance with s. 155 (1) of the Housing Act, 1936. The section states that the warrant shall be in the form shown in the schedule to the Small Tenements Recovery Act, 1838, or in a form to the like effect, and to this extent therefore it seems that proceedings under the Housing Act are analagous to proceedings under the Act of 1838. Section 155, however, does not mention service of a notice of intended application upon the occupier, and s. 167 of the Housing Act deals with the service of notices, etc., required or authorized to be served under the Housing Act. Accordingly, although logically the occupier will have to be notified of the intended application to the court, we take it that the notification will not have to be effected by the cumbersome method of procedure prescribed by the Act of 1838.

It is presumed that proceedings under the Housing Act are analagous to those under the Act of 1838 in that they will not be by way of summons, but by way of application to the court for the issue of its warrant, followed by a warrant directed to the police, and not by an "order" made upon a "defendant." In these circumstances we feel that our correct method of procedure would be to obtain from the clerk to the magistrates a date on which his bench will hear our application, and then to serve upon the occupiers, by registered post, a notice in the form of the enclosed draft. If you can let us have your opinion on this matter, we feel that it will not only be of assistance to ourselves, but also to the bench before which we shall appear.

PRIESTOR.

Answer.

We agree that the reference in s. 155 (1) of the Housing Act, 1936, to the schedule to the Small Tenements Recovery Act, 1838, does not imply that the local authority must follow the technical preliminaries laid down in the Act of 1838. But we think the person to be evicted ought to be told, before application for a warrant is made; it will be seen that s. 155 recognizes that he may not be the person who received the earlier notices. In theory, he may never have heard of the demolition order. We consider therefore that he should receive more than a bare statement of intention to apply to the court, so that he (and his solicitor, if he consults a solicitor) may be in a position to decide whether to raise any technical objection. We suggest that both the complaint and the notice to the occupier should state the existence of the demolition order, the notice already given under s. 155 of the Act of 1936, and the failure to comply, and in consequence the application for the warrant; *cp.* precedent No. 126 of Common Forms in *Stone*, relating to recovery of expenses of street works.

4.—Library—*Local authority—Imposition of fines in lending library.*

(1) In the absence of contract, can a public library authority sue for summarily or demand fines from borrowers of its books who fail to return them within a specified period—the fines varying according to the length of time the books are overdue ? I write from Eire; our Acts agree in relevant particulars with yours. Power is given to library authorities to make byelaws for, *inter alia*, the protection of their books from injury and to enable library authorities to obtain guarantees against loss or injury to their books. But this would suggest that a byelaw imposing such fines as aforesaid would be *ultra vires*.

(2) In the absence of contract and also in the absence of a byelaw authorizing such fine (assuming such byelaw were valid) can a library authority lawfully demand such fine from a borrower of its books who returns them after a specified period has elapsed ?

Reference to any reported decisions will be appreciated.

C. SHILLES.

Answer.

We went carefully into several aspects of this question at 117 J.P.N. 653 and 785. Our opinion is that the Acts do not authorize the imposing of these charges, and that a library authority cannot give itself, by its own byelaws, power to impose charges which Parliament has not authorized. Nor can it do so by contract, in this particular matter. We do not know of any case decided in the High Court upon this point under the Public Libraries Acts, but in the earlier of the two articles mentioned we cited two decisions which we consider relevant, upon the general principle involved.

5.—Magistrates—*Jurisdiction and powers—Post office bank book taken by police from prisoner's house—Authority of court to direct that it be handed to prisoner or to allow him to withdraw money from it.*

A man is charged with various office-breakings, etc. From his house has been taken by the police a post office savings bank book showing a credit of over £100. On the assumption that this book is not required as an exhibit, application has been made to the police and to the magistrates under the Magistrates' Courts Act, 1952, s. 39, for that pass book to be handed to the defendant or to such person as he may require, but the police have refused " in the interests of justice." The magistrates stated that notice must be given of such application to them before they will consider it and when the court was asked if there was any authority for so insisting I was informed that it was courteous.

Your opinion is requested as to whether the magistrates can or should order the handing over of this pass book (if it is not an exhibit) so that the funds can be used for the defence. It is appreciated of course that if it becomes an exhibit, this cannot be done, but in that event can or should the magistrates make any order under that section for some of the money shown as a credit in the said book to be handed over for the defence?

J.S.M.W.

Answer.

It can be argued that in s. 39, *supra*, the words " taken from him " mean taken from his person, but we think that it can also be said that property is taken from a person if he is deprived of the possession of something which belongs to him. We regard the latter interpretation as consistent with the intention of the section and we see no reason, subject to a High Court ruling, to adopt the more restricted meaning.

On this basis:

1. If the court are of opinion that it is not contrary to the interests of justice so to do they have power to direct that the book be returned to the prisoner.

2. If the book becomes an exhibit and the court are of a similar opinion on this point they have power, we think, to direct that the accused may be allowed to withdraw all or part of the money as they think fit.

6.—Magistrates—*Practice and procedure—National insurance contributions—Payment of arrears of contributions before hearing of summons for offence of failure to pay.*

With reference to P.P. 5, 119 J.P.N. 596, I should be glad if you will reconsider your answer so far as it concerns unpaid contributions under the National Insurance Act, 1946.

Non-payment of a contribution under the said Act is a summary offence, s. 2 (6), penalty not exceeding £10. When proceedings are thus started there is usually annexed to the summons notice under art. 19 of the National Insurance (Contributions) Regulations, 1948, covering the total arrears due. On conviction the total sum due is recoverable *as a penalty*, art. 19 (5). Article 19 (8) saves the right of the Minister to proceed by way of civil proceedings. I have never known this done.

Last week I had a case here in which the unpaid contributions were paid after issue of the summons and notice. The payment of arrears before the hearing did not dispose of the summary offence of not stamping the card at the proper time, *i.e.*, the week when the contribution was due, and I shall be glad to hear if you agree.

SEVIS.

Answer.

We agree that the payment of arrears after the issue of a summons does not dispose of the offence of not stamping the card (*i.e.*, paying the contribution) at the proper time.

7.—Probation — *Further offence — Fresh probation order — Further offence.*

At a court of Assize A is placed on probation for three years. Six months later he is convicted by a magistrates' court of an offence committed during his period of probation. He is remanded on bail to appear before the Assize court and that court makes a fresh probation order for three years. Three months later A again appears before a magistrates' court and is convicted of further offences committed by him since his second appearance at the Assize court. Your opinion is sought as to whether the second probation order made by the Assize court puts an end to the first one and whether A, who is now committed in custody to appear before the Assize court, should be deemed to have committed the offences during his first period of probation or during his second period of probation. S. INTEGRITY.

Answer.

The offender has not been sentenced for his original offence, and therefore the first probation order remains in force unless it is discharged: Criminal Justice Act, 1948, s. 5. It seems therefore that the latest offences for which he has been convicted and dealt with can be stated to have been committed during either or both periods of probation, but as the whole matter relates back to the first probation order the most practical way of dealing with the case is to refer to that order and to mention the second at the Assizes.

8.—Road Traffic Acts—*Dangerous and careless driving—Separate summonses issued—Procedure for hearing.*

With regard to cases where separate informations have been laid by the prosecution for dangerous and careless driving, I shall be glad to know your opinion as to the correct procedure. I have read the Practical Points at 112 J.P.N. 15, and articles at 112 J.P.N. 226, 227, 305, also the question and answer at 116 J.P.N. 192, and while it seems to be clear that there is no objection to both informations being " taken together " with the accused's consent (*see Edwards* v. *Jones* [1947] 1 All E.R. 830; 111 J.P. 324, and *R.* v. *Ashbourne Justices* (1950) 48 L.G.R. 268) it is emphasized that the accused should not be " charged " with careless driving, in case he pleads guilty and is thus enabled to plead that this bars a conviction for dangerous driving. It has been my practice to charge the defendant with dangerous driving and give him the option of being tried by a jury at quarter sessions and if he has pleaded " not guilty " to inquire if he has any objection to the case of alleged careless driving being " taken together," but I have been careful not to charge the accused with " careless driving." Is this procedure correct ? It has been suggested to me that it is not proper to take the case of alleged careless driving together with that of alleged dangerous driving, without taking the accused's plea to the charge of alleged careless driving.

It should be made clear that my query relates to cases where separate informations for alleged dangerous and careless driving are laid, not to cases where on the dismissal of a case of dangerous driving, it is sought to prefer a charge of careless driving under s. 35 of the Road Traffic Act, 1934. JUTHIN.

Answer.

We think that if the defendant does not claim trial by jury he should be asked to plead to the s. 11 charge. If he pleads not guilty the court should tell him that it does not propose, at that stage, to take any plea on or to proceed with the s. 12 charge. If necessary the court can rely later on the provisions of s. 35 of the 1934 Act. The fact that a summons has been issued alleging a s. 12 offence does not in our view make s. 35 inoperative, and if the court at any stage is satisfied that the s. 11 offence is not proved, the charge under s. 12 can then be " preferred " and the defendant's plea to that charge be taken. The provisions of s. 35 as to evidence then apply. One advantage of there having been a summons under s. 12 is that it makes it impossible for the defendant to urge that an adjournment is necessary because his defence is prejudiced by reason of the s. 12 charge having been preferred.

It may be that in pleading not guilty to the s. 11 charge the defendant will state that he pleads not guilty to both charges. In that event the two charges can, *with his consent*, be heard together and there is no need to rely upon the provisions of s. 35 of the 1934 Act.

We do not think that the court can begin the hearing of the s. 12 charge without taking a plea.

9.—Shops Act, 1950—*Sunday sales—Box tricycles and mobile shops.*

With reference to your answer to P.P.10 in the issue of October 29, 1955, does not the word " locality " in s. 12 of the Act of 1950 deal with the geographical requirements of the section, *viz.*, street, park, public place, etc., and does not the word " place " qualify the type of premises affected by the section ? If, as you suggest, a " street " is not a " locality " but is a " place " within the meaning of the section, then it should be possible in the section to substitute the word " street " for " place " and get the proper intention. By this substitution, however, the relevant part of the section would read, " It shall not be lawful in any locality to carry on in any street not being a shop . . . " This, obviously, does not read correctly. It is, therefore, respectfully suggested that the question of whether a box tricycle or a mobile shop is a " place " within the meaning of the section is still not free from doubt.

May I have your further observations, please? SEDONA II.

Answer.

The word " locality " refers, in our opinion, to an area such as may be the subject of an order fixing, for example, early closing day. It may be unlawful to sell in one locality at a time when it is lawful in another locality. The words " street, park, public place, etc. " do not occur in s. 12.

In our opinion the word " place " can include a street and many other kinds of " place," and we do not think the substitution of the word " street " for the much wider expression " place," is the basis of a sound argument. If a statute used such words as " any animal not being a dog " a cat would obviously be included, and it would not be suggested that we could read it as " any cat not being a dog." The expression " any place not being a shop," conveys to us the meaning " anywhere but in a shop."